

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO**

RAMON M. DEL CAMPO,

Plaintiff,

v.

Civ. No. 20-640 GJF

GOSPEL RESCUE MISSION.,

Defendant.

**ORDER GRANTING MOTION TO PROCEED
IN FORMA PAUPERIS AND LEAVE TO AMEND**

THIS MATTER comes before the Court on Plaintiff's Civil Rights Complaint Pursuant to 42 U.S.C. § 1983 [ECF 1] ("Complaint") and Application to Proceed in District Court Without Prepaying Fees or Costs [ECF 2] ("Application").

I. Application to Proceed *in Forma Pauperis*

The statute for proceedings *in forma pauperis*, 28 U.S.C. § 1915(a), provides that the Court may authorize the commencement of any suit without prepayment of fees by a person who submits an affidavit that includes a statement of all assets the person possesses and that the person is unable to pay such fees.

When a district court receives an application for leave to proceed in forma pauperis, it should examine the papers and determine if the requirements of [28 U.S.C.] § 1915(a) are satisfied. If they are, leave should be granted. Thereafter, if the court finds that the allegations of poverty are untrue or that the action is frivolous or malicious, it may dismiss the case[.]

Menefee v. Werholtz, 368 Fed.Appx. 879, 884 (10th Cir. 2010) (citing *Ragan v. Cox*, 305 F.2d 58, 60 (10th Cir. 1962). "The statute [allowing a litigant to proceed *in forma pauperis*] was intended for the benefit of those too poor to pay or give security for costs...." *Adkins v. E.I. DuPont de Nemours & Co.*, 335 U.S. 331, 344 (1948). While a litigant need not be "absolutely destitute,"

“an affidavit is sufficient which states that one cannot because of his poverty pay or give security for the costs and still be able to provide himself and dependents with the necessities of life.” *Id.* at 339.

The Court **GRANTS** Plaintiff’s Application to Proceed in District Court Without Prepaying Fees or Costs. Plaintiff signed an affidavit stating he is unable to pay the costs of these proceedings and provided the following information: (i) Plaintiff’s total monthly income is \$805.00 and (ii) Plaintiff’s monthly expenses total \$400.00. The Court finds that Plaintiff is unable to pay the costs of this proceeding because he signed an affidavit stating he is unable to pay the costs of these proceedings and because of his low monthly income.

II. The Complaint

Gospel Rescue Mission is the sole Defendant in this case. Plaintiff alleges:

The mission allowed access to several young ladies; whom watched me bathe and on several occasions, they allowed a young girl under 8 yrs of age to view the shower scences. Servallance footage will show them entering the mission from April, May. Please view the cause number *Ramon M. del Campo vs. City of Las Cruces Police Department* to absertain the facts!

[sic] Complaint at 7. Where the form Complaint instructs Plaintiff to “[b]riefly state the background of your case, Plaintiff wrote: “Please see attached forms, as well view *Ramon M. del Campo vs. City of Las Cruces New Mexico*. Complaint at 2.

The Court will not comb the record of this or other cases and act as an advocate for Plaintiff. *See Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991) (stating that “it is [not] the proper function of the district court to assume the role of advocate for the pro se litigant”). The Court, however, is granting Plaintiff leave to file an amended complaint. Plaintiff’s amended complaint must contain “a short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2); *see* Complaint at 3 (Complaint form instructs Plaintiff to “Include all facts

you consider important, including names of persons involved, places and dates. Describe exactly how each defendant is involved”).

The Complaint fails to state a claim pursuant to 42 U.S.C. § 1983 because it does not allege a violation of a right secured by the Constitution or the laws of the United States or that Defendant was acting under color of state law. *See Hogan v. Winder*, 762 F.3d 1096, 1112 (10th Cir. 2014) (“Under 42 U.S.C. § 1983, ‘a plaintiff must allege the violation of a right secured by the Constitution and laws of the United States.’”) (quoting *West v. Atkins*, 487 U.S. 42, 48 (1988)); *McCarty v. Gilchrist*, 646 F.3d 1281, 1285 (10th Cir. 2011)(“Section 1983 provides a federal civil remedy for the deprivation of any rights, privileges, or immunities secured by the Constitution by any person acting under color of state law”).

III. Proceeding *in Forma Pauperis*

Plaintiff is proceeding *in forma pauperis*. The statute governing proceedings *in forma pauperis* states that “the court shall dismiss the case at any time if the court determines that … the action … fails to state a claim on which relief may be granted.” 28 U.S.C. § 1915(e)(2); *see also Webb v. Caldwell*, 640 Fed.Appx. 800, 802 (10th Cir. 2016) (“We have held that a pro se complaint filed under a grant of *ifp* can be dismissed under § 1915(e)(2)(B)(ii) for failure to state a claim … only where it is obvious that the plaintiff cannot prevail on the facts he has alleged and it would be futile to give him an opportunity to amend.”).

While the Complaint can be dismissed under § 1915(e)(2)(B)(ii) for failure to state a claim, it is not obvious that it would be futile to give Plaintiff an opportunity to amend. The Court therefore **GRANTS** Plaintiff leave to file an amended complaint.

IV. Service on Defendants

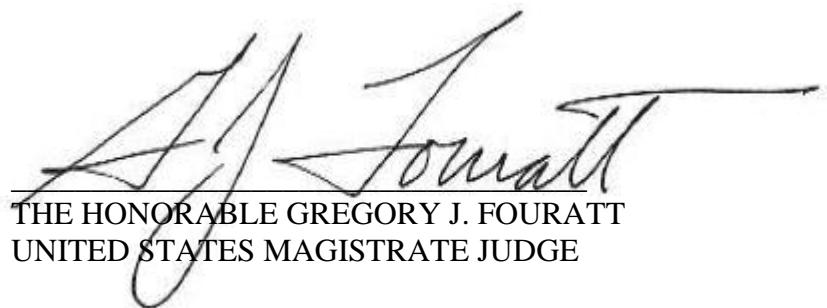
Section 1915 provides that the “officers of the court shall issue and serve all process, and perform all duties in [proceedings *in forma pauperis*]”). 28 U.S.C. § 1915(d). The Court will not order service of Summons and Complaint on Defendants at this time because the Complaint fails to allege facts that support jurisdiction. The Court will order service if Plaintiff files (i) an amended complaint that states a claim over which the Court has jurisdiction and (ii) a motion for service that provides Defendants’ addresses.

V. Conclusion

IT IS THEREFORE ORDERED that:

- (1) Plaintiff’s Application to Proceed in District Court Without Prepaying Fees or Costs [ECF 2] is **GRANTED**.
- (2) Plaintiff may file an amended complaint within 14 days of entry of this Order. Failure to timely file an amended complaint may result in dismissal of this case.

SO ORDERED.



THE HONORABLE GREGORY J. FOURATT
UNITED STATES MAGISTRATE JUDGE